



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL, MNSD, FFT

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence. The tenant stated that the landlord was served with the tenant's notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on March 6, 2020 and has provided in his direct testimony the Canada Post Customer Receipt Tracking Number (noted on the cover of this decision). The tenant also stated that the landlord was served with the tenant's submitted documentary evidence via Canada Post Registered Mail on June 5, 2020 and has provided in his direct testimony the Canada Post Customer Receipt Tracking Number (noted on the cover of this decision).

I accept the undisputed affirmed evidence of the tenant and find that the landlord was properly served via Canada Post Registered Mail as per sections 88 and 89 of the Act. Although the landlord did not attend and participate in the scheduled conference call, the landlord is deemed sufficiently served as per section 90 of the Act.

This matter was set for a conference call hearing at 1:30 p.m. on this date. The tenant attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence. The tenant also confirmed that he was in receipt of the landlord's notice of hearing package and was aware of the landlord's issues and extent of the landlord's application for dispute. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that I was the only person who had called into this teleconference.

The landlord failed to attend the hearing by way of conference call. I waited until 10 minutes past the start of the scheduled hearing time in order to enable both parties to connect with this teleconference hearing.

Rule 7 of the Rules of Procedure provides that:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.2 Delay in the start of a hearing

In the event of a delay of a start of a conference call hearing, each party must stay available on the line to commence the hearing for 30 minutes after the time scheduled for the start of the hearing.

In the event of a delay of a face-to-face hearing, unless otherwise advised, the parties must remain available to commence the hearing at the hearing location for 30 minutes after the time scheduled for the start of the hearing.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

The hearing was resumed and ended after 38 minutes.

Accordingly, in the absence of any evidence or submissions from the landlord and in the absence of the landlord's participation in this hearing, I order the landlord's application dismissed without leave to reapply. I make no findings on the merits of the matter. The hearing proceeded only on the tenant's application for dispute.

Issue(s) to be Decided

Is the tenant entitled to monetary order for return of the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

The tenant stated that there was no signed tenancy agreement, but that the tenancy was to begin on October 1, 2019. A security deposit of \$300.00 was paid on September 25, 2019.

The tenant seeks return of the \$300.00 security deposit and recovery of the \$100.00 filing fee. The tenant stated that a tenancy was verbally agreed to on September 25, 2019 when a \$300.00 security deposit was paid to the landlord. The tenancy was to begin on October 1, 2019. The tenant stated that the move-in date was set for October 5, 2019 and when the tenant attended the rental, he discovered that the landlord had forgotten and re-rented the unit to another tenant. The landlord offered a different option of rental at another building which was refused by the tenant. The tenant gave notice on October 5, 2019 that the tenancy could not proceed as the landlord had re-rented the unit to another tenant. The tenant gave notice to end the tenancy agreement on October 5, 2019. The tenant stated that the landlord was provided his forwarding address in writing on February 4, 2020 when the landlord was deemed to have been served with it as found during a previous hearing on February 4, 2020 as shown in the submitted copy of the previous decision (file number noted on the cover of this decision) dated February 5, 2020. The tenant stated that the landlord had not returned the \$300.00 security deposit as of the date of this hearing.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, I accept the undisputed affirmed evidence of the tenant and find that the landlord was given a \$300.00 security deposit as per the submitted copy of the handwritten receipt dated September 25, 2019. I also find as per the tenant's submissions that in a previous decision the landlord was deemed to have been served with the tenant's forwarding address on February 4, 2020. Although the landlord did file an application to dispute the return of the \$300.00 security deposit, the landlord has failed to attend to put forth his claim and the application was dismissed without leave to reapply. On this basis, I find that the landlord has failed to comply with section 38(1) of the Act. The tenant is entitled to return of the \$300.00 security deposit.

I also find as the landlord failed to return the \$300.00 security deposit the landlord is subject to section 38(6) and is liable to an amount equal to the \$300.00 security deposit.

The tenant has established a claim for \$600.00. The tenant having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$700.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 30, 2020

Residential Tenancy Branch